Both the respondents, *i.e.* the Collector of Land Revenue Penang and Sungai Nibong Company Ltd. opposed the application for extension of time to object and both relied on the cases of *Re Coles*[1] and *In Re Helsby*.[2] In both these cases the application for leave to appeal out of time was as a result of mistake of the parties concerned as to the time limited for appeal. The court held in these cases that a mistake made by an appellant solicitor was not a special circumstance, and that was the only reason for the delay.

In the case before me there was a genuine belief and conviction by the applicant that as the State Authority was acting on its behalf, and for other reasons stated above, that the State Authority should object to the award. But the State Authority although it had acted for the applicant was in an embarrassing position to object against its own award. Furthermore if in fact the Collector has a Regional Valuation Officer's Report before him, it would have been in the interest of justice that notwithstanding the fact that the applicant had every right to attend the inquiry, the existence of the report should have been notified to the applicant who in the last resort would have been the one to be called upon to pay the compensation.

In *Re Norman*[3] Lopes L.J. says

"The statute uses the words 'special circumstances'. Those are wide comprehensive and flexible words and I think the legislature intended them to be so and that no court can or ought to lay down any exhaustive definition of them.... It is for the discretion of the judge to say what are special circumstances in a particular case."

In *Re Boycott*[4] Bowen L.J. said

"Special circumstances I think are those which appear to the judge so special and exceptional as to justify taxation. I think no court has a right to limit the discretion of another court though it may lay down principles which are useful as a guide in the exercise of its own discretion."

In *Lau Cher Hian* v. *Collector of Land Revenue, Muar*[5] the Federal Court held that the fact that hardship would be caused to a would-be appellant was a special circumstance for the exercises of the court's discretion in enlarging the time for the appeal. In the course of his judgment Ong C.J. (as he then was) stated

"When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment. That, I believe, to be the reason why the court is given a discretion to temper the rigidity of the law. 'Special grounds' were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, *bona fide* mistake or mere 'ignorance of the law' should be left out altogether when considering special grounds."

Here there was *bona fide* controversy as to who was to appeal, the amount of compensation awarded was a very substantial sum and the applicant is not wholly to blame for the delay.

This is only an application to bring the mater to court for review. As Lord Halsbury stated in *Re Helsby, supra* "No doubt as a general rule, if there is a real question to be argued it is better that it should be argued than that the appeal should be disposed of upon technical objection."

For the reasons stated above the court in the exercise of its discretion allowed the application and enlarged the time limited by section 38 of the Land Acquisition Act.

Finally, in passing it should be noted the applicant is not a private profit making corporation for the benefit of private individuals. It is incorporated to function for the public good and for public interest. It is a legal entity but whatever affects it adversely affects the people of the State.

Application allowed.

Solicitors: *Lim Kean Chye & Co.; Lim Kean Siew & Co.*

PUBLIC PROSECUTOR v. SEMBAN

[R.Cr.J. (Harun J.) August 18, 1975]
[Kuala Lumpur — Selangor Criminal Revision No. 4 of 1975]

Criminal Law and Procedure — Trial — Case not conducted satisfactorily — Discharge not amounting to acquittal.

Criminal Law and Procedure — Trial — Postponement — Observations on.

This case arose out of a traffic accident in 1972. The record showed a series of postponements necessitating the issue of summonses to 12 witnesses on at least five different occasions during 1973 to 1975 and for various reasons. When trial commenced on June 19, 1975 the prosecuting officer informed the court that two prosecution witnesses were absent although they had been served with the summonses. He applied to the court for warrants of arrest to issue against these witnesses. The learned magistrate thereupon stopped the trial and ordered the defendant to be discharged not amounting to an acquittal.

Held: (1) the learned magistrate should have at least heard all the prosecution witnesses who were present in court as they were attending court (in this case) for the fifth time before adjourning the case to hear the evidence of the two witnesses who were absent;

(2) when witnesses who had been served with the summons to attend court were absent, the proper course was to issue warrants for their arrest to compel attendance. A discharge, even though not amounting to an acquittal, was not the proper course, since neither of the contending parties was to blame for the absence of witnesses who had been served with the summons to attend court;

(3) in this case the order of the learned magistrate of discharge not amounting to an acquittal should be set aside and substituted therefor an order for a trial *de novo* before another magistrate.

CRIMINAL REVISION.

Abdul Kadir bin Musa (Deputy Public Prosecutor) for the Public Prosecutor.

A. S. Iaduray for the defendant.

Harun J.: I called for the records of this case on revision.

This case arises out of a traffic accident between a motor bus and a motor lorry on April 6, 1972. The Police commenced investigations almost immediately and on December 11, 1972 the Police applied to the magistrate at Telok Datok for a summons to be issued against the bus driver to answer a charge of negligent driving under section 36(i) of the Road Traffic Ordi-

nance 1958. The summons was issued by the magistrate on January 4, 1973 and made returnable on January 18, 1973. On the return date the magistrate fixed the case for hearing on June 21, 1973.

The record then shows a series of postponements necessitating the issue of summons to 12 witnesses on at least five different occasions as follows: —

Date of Hearing	*Date Hearing Adjourned to*	*Reasons for Adjournment*
21. 6.73	15.11.73	Investigating Officer attending course at Kuala Lumpur.
15.11.73	14. 3.74	No reason given.
14. 3.74	25. 7.74	Court engaged in Murder P.E.
25. 7.74	14.11.74	Court sitting at Sepang.
14.11.74	13. 3.75	Indian Interpreter not available.
13. 3.75	19. 6.75	On application of Defence Counsel as he had just been retained.

The trial commenced on June 19, 1975 and a Police Constable testified that he received the Police Report in connection with the case. After his evidence was recorded, the Prosecuting Officer informed the court that two prosecution witnesses were absent although they had been served with the summons. He applied to the court for Warrants of Arrest to issue against these two witnesses. The learned magistrate thereupon stopped the trial and ordered the defendant to be discharged not amounting to an acquittal.

It is clear from the record of proceedings of this case that its conduct has been far from satisfactory. Apart from the Police and the defendant, third parties, in particular the prosecution witnesses and passengers in the bus have been put to great inconvenience and expense. No thought whatsoever was given to them or the public expenditure involved in bringing the witnesses to court so many times. I must make it clear that everyone involved must share the blame as it is not the fault of one particular individual. The Police took eight months to investigate the case before applying for a summons. Two magistrates dealt with the case in turn and both the prosecution and the defence applied for postponements. Inspite of all this, when the case finally came up for trial the learned magistrate should have at least heard all the prosecution witnesses who were present in court as they were attending court for the fifth time before adjourning the case to hear the evidence of the two witnesses who were absent. In any event, when witnesses who have been served with the summons to attend court are absent, the proper course is to issue warrants for their arrest to compel attendance. A discharge, even though not amounting to an acquittal, is certainly not the proper course, since neither of the contending parties is to blame for the absence of witnesses who have been served with the summons to attend court.

In revision, I would therefore set aside the learned magistrate's order of discharge not amounting to an acquittal and order a trial *de novo* before another magistrate, as the learned magistrate who part-heard the case has since been transferred.

Before parting with the case, I would like to remind magistrates that it is in the public interest that cases which have been fixed for hearing should in fact be heard. Postponements should be granted only on very exceptional grounds. The convenience of counsel or the prosecuting officer is certainly not one of them. Of paramount importance is that members of the public who have come forward as witnesses should be given every consideration by the court so that the performance of their public duty is not only appreciated but subject to the minimum of delay, inconvenience and expense.

Order accordingly.

Solicitors: *Tunku Zuhri, Manan & Abdullah.*